

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

BRIAN DOLAN

(b) County of Residence of First Listed Plaintiff **Guam**  
(EXCEPT IN U.S. PLAINTIFF CASES)

**THE LAW OFFICE OF JOHN RICHARD BORDALLO BELL**  
341 S. Marine Corps Dr. RK Plaza Suite 309, Tamuning, Guam 96913  
Tel: (671) 646-5722; john.r.b.bell@gmail.com

**DEFENDANTS**

AERO MICRONESIA, INC. dba ASIA PACIFIC AIRLINES

County of Residence of First Listed Defendant **Guam**

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

STEVEN P. PIXLEY  
TSL Plz 3rd Fl. Saipan, MP 96950  
Tel: (6700) 483-5040**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- |  |  |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)   |

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff, and One Box for Defendant)

- | Citizen of This State      | PTF                                   | DEF   | PTF                        | DEF                                   |
|----------------------------|---------------------------------------|---|----------------------------|---------------------------------------|
| <input type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5            |
| <input type="checkbox"/> 3 | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>REAL PROPERTY</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>CIVIL RIGHTS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<b>LABOR</b> <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
			<b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

**V. ORIGIN** (Place an "X" in One Box Only)

- |   |   |  |   |  |   |
|---|---|--|---|--|---|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from Another District (specify) _____ | <input type="checkbox"/> 6 Multidistrict Litigation |
|---|---|--|---|--|---|

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): **42 USC 1981, Title VII****VI. CAUSE OF ACTION**Brief description of cause: **complaint regarding Employment Discrimination and Retaliation****VII. REQUESTED IN COMPLAINT:** CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.DEMAND \$ **\$100,000**CHECK YES only if demanded in complaint:  
**JURY DEMAND:**  Yes  No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER \_\_\_\_\_

DATE

**4/18/17**

SIGNATURE OF ATTORNEY OF RECORD

*[Signature]*

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AMOUNT

APPLYING FOR

JUDGE

MAG. JUDGE

1      *The Law Office of*  
2      *John Richard Bordallo Bell*  
3      341 S. Marine Corps Drive  
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5      Tamuning, Guam 96913  
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7      john.r.b.bell@gmail.com

8      Attorney for Plaintiff Brian Dolan

9  
10     IN THE DISTRICT COURT OF GUAM

11     BRIAN DOLAN,

12     Plaintiff,

13     vs.

14     AERO MICRONESIA, INC. dba ASIA  
15     PACIFIC AIRLINES

16     CIVIL CASE NO. CV \_\_\_\_\_

17     **VERIFIED COMPLAINT;  
18     DEMAND FOR JURY TRIAL**

19     I.     **Jurisdiction**

- 20     1. This Court has original jurisdiction of this action pursuant to 28 U.S.C. § 1331 (Federal  
21     Question).
- 22     2. This action is brought pursuant to Title VII of the Civil Rights Act of 1964, as amended, for  
23     employment discrimination and retaliation based on Plaintiff's national origin.
- 24     3. Jurisdiction is further conferred on this Court by 42 U.S.C. Section 2000e(5). Equitable and  
25     other relief are also sought under 42 U.S.C. 2000e(5)(g).
- 26     4. Jurisdiction is also based on 28 U.S.C. Sections 1343 and 42 U.S.C. Sections 1981 *et seq* and  
27     this Court may exercise supplemental jurisdiction of any related territorial based claims.
- 28     5. Plaintiff has complied with all conditions precedent to maintain an action under Title VII and  
29     42 USCA §2000e, *et seq*, to wit:

30     VERIFIED COMPLAINT; DEMAND FOR JURY TRIAL - 1

6. On November 9, 2015, Plaintiff filed EEOC Charge of Discrimination No. 34G-2016-00004 regarding national origin discrimination, as further described herein.
  7. On April 8, 2016, Plaintiff submitted a second EEOC Charge with the EEOC's Honolulu Office, this time adding the claim of retaliation.
  8. On or about January 25, 2017, a Notification of Right to Sue regarding Plaintiff's charges against Defendant was received from the EEOC.
  9. This complaint has been filed within ninety (90) days of the receipt of the Notification of Right to Sue.

## II. Factual Background

10. Plaintiff Brian Dolan (“Dolan”) (born 12/14/73) has been a pilot with Defendant Asia Pacific Airlines (“APA”) since April of 2003.
  11. Dolan is of Marshallese descent, remains a citizen of the Republic of the Marshall Islands, and is lawful to work in the U.S.
  12. APA is the business name of Aero Micronesia, Inc, which, in turn, is a wholly owned subsidiary of Tan Holdings Corporation.
  13. APA’s principal place of business is in and around the Guam International Airport.
  14. APA provides cargo and charter services mainly in and around the Pacific region with a small fleet of 727 and 757 type aircraft and approximately 20 pilots and flight engineers.
  15. During Dolan’s employment with APA, APA has had no employment handbook and no human resources department.
  16. When Dolan first began working for APA in 2003, he started out as a First Officer (aka co-pilot) working under then-Chief Pilot Alicia Atalig [believed to be of Chamorro descent].

**VERIFIED COMPLAINT; DEMAND FOR JURY TRIAL - 2**

- 1      17. In approximately 2008, after Atalig departed from APA, Dolan became treated like the  
2            'black sheep' of APA.
- 3      18. For example, in 2008 or 2009, Captain Joe San Agustin [believed to be Chamorro], Dolan (as  
4            First Officer), and Flight Engineer Charlie Canton [believed to be Caucasian] were being sent  
5            on Korean Air to Taiwan to pick up APA's aircraft.
- 6      19. When Dolan got to the airport, Canton was dressed nicely and asked why Dolan wasn't  
7            dressed up because San Agustin called Canton the night before and said they were being  
8            flown first class.
- 9      20. Dolan checked in and learned he was in coach. Dolan wrote to then President Mike Quinn  
10            [believed to be Caucasian] about this incident because Dolan felt humiliated and degraded.
- 11     21. Quinn's reply was, "what did you expect? Everyone to overnight in Taiwan? Flip coins?  
12            What?"
- 13     22. Per industry standards and APA's own traditional seniority system, First Officers outrank  
14            Flight Engineers.
- 15     23. Before Dolan was promoted from First Officer to Captain, he was passed over by men hired  
16            from outside the company such as Andy Chen [believed to be of Chinese descent] and John  
17            Borth [believed to be Caucasian], but both men were employed only for a short time.
- 18     24. In 2010, after an unusually long period of seven years as a First Officer, despite never failing  
19            a training and having excellent marks, Dolan was finally upgraded to Captain.
- 20     25. In March of 2011, after Dolan had surgery on a broken hand, APA threatened to suspend him  
21            indefinitely if he did not meet his training schedule, despite the fact other pilots not of  
22            Marshallese descent had multiple opportunities to adjust training schedules due to their  
23            failing the trainings.

24            VERIFIED COMPLAINT; DEMAND FOR JURY TRIAL - 3

26. In 2012, when Dolan was hired at Saipan Air, which is also owned by Tan Holdings Corporation, he took a two month leave of absence to gain his 757 rating.

27. However, Dolan returned to APA within a matter of months because Saipan Air didn't pan out as a company.

28. In approximately 2012 or 2013, Chief Pilot Craig Holmes [believed to be Caucasian] actually shut down APA's operations for a day due to safety concerns, suffering no adverse action as a result.

29. In approximately November of 2014, APA hired Scott Davis, a pilot who is also of Marshallese descent.

30. Unlike Dolan, Davis is a U.S. citizen, and Dolan believes Davis was hired notwithstanding his Marshallese heritage only because pilot Randy Goodman's [believed to be mostly Caucasian] wife and Davis' wife are friends and flight attendant colleagues.

31. By at least January of 2015, APA had begun the process of bringing Boeing 757 series aircraft into service as part of a fleet modernization and expansion

32. That same year, Dolan was told by then-President Mike Quinn [believed to be Caucasian] he would be a Captain and Check Airman [an aircraft pilot who performs an oversight, safety and qualification role for commercial pilots undergoing evaluation] as soon as the 757's were acquired

33. On August 11, 2015, Dolan ferried a new 757 from Phoenix to Honolulu with pilot Jim Young [believed to be Caucasian] who was specially hired to ferry the 757.

34. Shortly thereafter, Dolan raised safety concerns with Director of Operations Ralph Freeman [believed to be Caucasian] about APA pilots, himself included, operating the 757's with little flight experience

**VERIFIED COMPLAINT; DEMAND FOR JURY TRIAL - 4**

- 1       35. Although Dolan expressed his concerns in multiple exchanges with APA management, he  
2                  never said he did not want to fly the 757's.
- 3       36. In fact, on the 26<sup>th</sup> or 27<sup>th</sup> of September of 2015, Dolan met with Freeman to reiterate that he  
4                  wanted to be part of the 757 team.
- 5       37. During this meeting, despite his earlier agreement to present, APA President Robert Walker  
6                  [believed to be Caucasian] refused to meet with Dolan, claiming he was "in the shower."
- 7       38. In late September 2015, Dolan was taken off the flight schedule completely from October 21  
8                  to October 31 and replaced with Caucasian pilots.
- 9       39. Dolan was effectively demoted to being a 727 pilot while less senior Caucasian pilots were  
10                  promoted to fly the 757 aircraft.
- 11      40. Given Dolan's seniority, some of Dolan's pilot colleagues spontaneously called him to ask  
12                  him what was going on with the schedule.
- 13      41. On November 4, 2015, Dolan relayed his concerns to the Fair Employment Practices Agency  
14                  ("FEPA") office at the Guam Department of Labor.
- 15      42. On November 9, 2015, based on advice from staff at the FEPA office, Dolan filed an EEOC  
16                  charge of discrimination based on his being of Marshallese origin.
- 17      43. In March of 2016, when Dolan reported that he was sick and unable to work, APA demanded  
18                  doctors' notes for the last three times Dolan called in sick.
- 19      44. To Dolan's knowledge, APA has no written procedure for calling in sick and had previously  
20                  never demanded medical documentation of any illness from any pilots.
- 21      45. Notwithstanding that Dolan's actions were nothing unusual or out of standards, Vice  
22                  President of Marketing Adam Ferguson [believed to be Caucasian] told Chief Pilot Scott
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VERIFIED COMPLAINT; DEMAND FOR JURY TRIAL - 5

1 Yoder [believed to be Caucasian] that Dolan's illness communications were "lame" and  
2 Dolan was scolded by APA management for calling in sick.

3 46. Yoder demanded Dolan "need[ed] a more expansive declaration" from his doctor; that Dolan  
4 needed to prove more than "I am sick" via doctors' notes.

5 47. On March 22, 2016 Dolan operated his 727 during a flight to Honolulu, according to APA's  
6 subsequent accusations, "at the wrong altitude...causing the aircraft to use an excessive  
7 amount of fuel...plac[ing] the crew and aircraft in danger."

8 48. In fact, Dolan followed the flight plan exactly and, if not for a fuel leak, he would have  
9 landed with an additional 10,000 lbs of fuel.

10 49. On March 23, 2016, Dolan emailed Freeman that flying to Honolulu with a broken fuel tank  
11 in the first place was a foolish and dangerous move and also relayed that Ferguson put profits  
12 over safety in pressuring Dolan and his crew to take unnecessary risks.

13 50. On March 24, 2016, Dolan emailed then Assistant Director of Operations Don Roney  
14 [believed to be Caucasian] that Ferguson threatened that Dolan *must* get on the 319 [the  
15 plane leaking fuel] or "That['s] it," Dolan would be left stranded in Honolulu and would have  
16 to find his own way home.

17 51. Freeman had also threatened, "I guess you're fired then" when Dolan refused to fly on the  
18 plane leaking fuel.

19 52. On or about March 25, 2016, the flight schedule designated Dolan as 'xxxxx' for March 26<sup>th</sup>  
20 and 27<sup>th</sup> of 2016.

21 53. This caused other pilots to call Dolan to ask if he was fired.

22 54. Dolan believes Jason Joson [believed to be Filipino] wrote the schedule at this time.

1       55. The Honolulu FAA personnel can confirm that they conducted a ramp check, confirmed a  
2       broken fuel tank was leaking fuel and, in fact, grounded the 727 as unsafe to fly.

3       56. On the evening of March 27, 2016, Director of Safety Richard Brown [believed to be  
4       Caucasian] emailed Roney that Dolan [supposedly] had not replied to his March 21st or 22nd  
5       2016 calls or emails to ensure the Fatigue Risk Management Plan was followed and that  
6       Dolan was well rested.

7       57. Under FAA standards, Dolan was then not obligated to be contact in contact with APA.

8       58. The next day, March 28, 2016, Roney and Walker issued Dolan written discipline.

9       59. This "Final Written Warning" accused Dolan of "sub-standard performances in the execution  
10      of [Dolan's] Captain – PIC [Pilot in Command]" duties.

11      60. The discipline cited that Dolan had supposedly failed on March 21<sup>st</sup> and 22<sup>nd</sup> of 2016 to  
12      answer telephone calls or emails despite being adequately rested for new flight assignments.

13      61. The March 28, 2016 discipline further alleged Dolan failed to timely report at 1200 local  
14      time for the March 22<sup>nd</sup> flight, that Dolan had flown at the wrong altitude, and that he did not  
15      follow the flight plan.

16      62. These charges are all false and without merit.

17      63. Dolan was further disciplined in writing by APA, according to APA's records, for sending  
18      the March 23, 2016 email regarding his safety concerns about flying with a leaking fuel tank  
19      "to ALL, including the FAA."

20      64. Dolan was also disciplined for his March refusal to fly the same 727 with the fuel leak and  
21      APA further noted 17 additional documents from Dolan's personnel record which Dolan is  
22      not privy to.

65. In contrast, when pilots Patrick Bartosz [believe to be Caucasian] and Garret Suga [believed to be Hawaiian] refused to take a flight out of Majuro due to safety concerns, APA bought them each a ticket on United Airlines.

66. In contrast, after Bartosz and Suga refused the Majuro flight, they were nonetheless promoted to the 757 program.

67. In Dolan's many years of experience at APA, virtually everyone has complained about safety issues at some time or another without any retaliation or punishment.

68. On March 29, 2016, Dolan filled out another EEOC intake questionnaire alleging, *inter alia*, retaliation based on his calling in sick being “lame,” and APA’s unusual demands for substantial medical documentation of his illnesses, specifically pointing to superior treatment of similarly situated individuals, namely Indian (South East Asian) Flight Engineer Bud Shivji, San Agustin, Suga, and Davis, who had also called in sick around this time.

69. While Davis is also Marshallese, Davis, unlike Dolan, did not file an EEOC claim of discrimination nor did he file safety related grievances so far as Dolan is aware.

70. Since July of 2016, against routine procedure, Dolan had been taken off the schedule for special flights to preferred destinations such as Miami which are normally given to senior pilots such as Dolan.

71. On August 23, 2016, a flight scheduled for 8:30pm to Koror, Palau was cancelled by Dolan due to bad weather.

72. This cancellation went against the wishes of Ferguson, who made Dolan's crew wait until 2:30am the next morning before they could go home.

73. The crew took this as punishment by Ferguson.

74. On August 24, 2016, Yoder began investigating Dolan's decision to cancel the previous night's flight despite Yoder's agreement at the time that Dolan was right to cancel the flight.

75. In an email on August 30, 2016 at 11:20am, Freeman admitted to Dolan, "I am concerned with the management involvement of that evening and I will address it."

76. At 11:32 am that day, Brown emailed Dolan that he could file a Safety Report on Baldwin [an internal safety reporting procedure].

77. In the email, Brown stated, "...I became involved after Jason [Joson] and Adam [Ferguson] called me...told Adam [Ferguson] flight should have left @6am with crew allowed to return 5am well rested...This is an ongoing investigation."

78. A September 13, 2016 email at 2:31pm from First Officer Randy Kohler [believed to be Caucasian] to Dolan summarized Kohler's verbal conversation with Yoder.

79. Kohler stated he had informed Yoder that Yoder was mistaken; Dolan did not refuse to fly after the weather had improved on August 24, 2016.

80. Kohler corroborated Dolan's account that Ferguson had applied pressure, via Joson, to coerce Dolan's crew to fly despite severe weather conditions.

81. According to Kohler, "Capt. Dolan calmly and professionally pointed out in detail why the aircraft could not LEGALLY depart."

82. Kohler was surprised Ferguson called Skyplan because the “VP of Marketing” was not on the  
on list of people eligible to deal with Skyplan.

83. Kohler noted, "I was surprised that Mr. Ferguson would interfere with the decisions of not only a Captain, but also a Check Airman...[In 20 years in the industry] I have never seen anything like this...."

1 84. Kohler added that shortly after the crew refused to fly, Ferguson told them they had to stay in  
2 the office all night, Mr. Brown the Director of Safety was called and Brown said they were  
3 trying to find another Captain to take the flight.

5       85. Kohler replied the weather was the problem, not the Captain, and that they would have to  
6                  replace Kohler as well because Kohler supported Dolan's decision.

7 | 86. On September 26, 2016, Dolan performed a line check with Goodman.

8 87. Goodman did not take the line check seriously; he played solitaire on his iPad while Dolan  
9 was supposed to be testing him.

11 88. Because Goodman did not perform adequately, Dolan wanted Goodman to retake the line  
12 check.

13 89. Goodman was investigated and is currently suspended by the FAA for previous issues.

<sup>14</sup> 90. While Dolan was off the following week, APA would allege Dolan did not answer calls from  
<sup>15</sup> management.

17 91. Dolan denies needing to answer any calls the following week while Dolan was off, but  
18 believes that at this time APA wanted Dolan to unduly relax his safety standards to pass  
19 Goodman despite Goodman's failing his line check.

20 92. On October 5, 2016, regarding the September 26, 2016 line check, Freeman emailed Dolan,  
21 "Chief Pilot Scott Yoder recently spoke with Goodman to discuss his performance and  
22 attitude and also counseled Captain Goodman."

24 93. Dolan responded to acknowledge he did pull down a shade to block Goodman's view in  
25 order to simulate a low visibility 'instrument approach.'

<sup>26</sup> 94. Dolan added that this was in line with what other APA check airmen had done with Dolan in  
<sup>27</sup> the past.

VERIFIED COMPLAINT: DEMAND FOR JURY TRIAL - 10

1 95. As confirmed by an October 28, 2016 email at 10:23 am, APA took Dolan completely off the  
2 schedule for November of 2016.

3 96. After this was reported to the FAA's Clarence Kanai, as confirmed by an e-mail at 11:44am  
4 on the same day, APA revised the November schedule to put Dolan back on a more normal  
5 schedule, but still without the special flights normally given to a pilot with Dolan's seniority.

6 97. On February 26, 2017, Dolan emailed Freeman, "my check Airman currency [authorization  
7 to conduct line checks] has been overdue since November 2016...FAA...came out to Guam  
8 last month and was unable to do a line check [on] me [to make sure Dolan met FAA  
9 standards before he was authorized to make sure *others* met FAA standards]...do you know  
10 when my FAA line check will be?"

11 98. On February 28, 2017, Freeman sidestepped Dolan's question by responding, "The B-727  
12 staffing is strained right now along with the scheduling being challenged until a B-757  
13 returns to the operation."

14 99. In fact, APA could have easily coordinated with the FAA to schedule Dolan's line check.

15 100. In March of 2017, according to APA records, APA was expected to have a second 757  
16 aircraft in operation.

17 101. On April 4, 2017, Freeman purported to revoke Dolan's position as APA's check airman.

18 102. This action, at the very least, reduces Dolan's pay and his prestige as a pilot.

23  
24 III. Legal Claims

25 103. APA, its agents, servants or employees, by their conduct alleged herein, intentionally,  
26 willfully, and without justification deprived Plaintiff of his rights, privileges, and immunities  
27 secured by the Constitution and laws of the United States and the territory of Guam.

1 particularly the right to be free from unlawful discrimination and retaliation in his  
2 employment.

3 **Count I: Discrimination Under Title VII and 42 USC § 1981 Based on Dolan's Marshallese**

4 **National Origin and Micronesian Race**

5  
6 104. Here, Dolan suffered adverse employment actions including but not limited to being  
7 ousted from the 757 program, taken off the schedule, denied special flights, threatened with  
8 termination, disciplined for spurious and pretextual allegations, and essentially fired as a  
9 check airman.

10  
11 105. Dolan's race and national origin, as indicated by the way APA and its employees have  
12 treated Dolan compared to the way APA generally treats others of different races and  
13 national origins, have been a motivating factor for these adverse actions.

14  
15 106. APA's stated reasons for its adverse employment actions are not the true reasons but instead  
16 are a pretext to cover up for race and national origin discrimination.

17  
18 107. But for APA's discriminatory animus against Marshallese/Micronesians, Dolan would not  
have suffered the adverse actions described above.

19 **Count II: Retaliation Under Title VII and 42 USC § 1981 for Reporting Unlawful**  
20 **Discrimination Based on Dolan's Marshallese National Origin and Micronesian Race**

21  
22 108. Here, since Dolan spoke up against and filed a charge regarding discrimination based on  
his status as a Micronesian who is Marshallese, APA subjected Dolan to adverse employment  
actions including but not limited to being ousted from the 757 program, taken off the  
schedule, denied special flights, threatened with termination, disciplined for spurious and  
pretextual allegations, and essentially fired as a check airman, which any reasonable  
employee also would have found to be materially adverse.

23  
24  
25  
26  
27  
28 VERIFIED COMPLAINT; DEMAND FOR JURY TRIAL - 12

109. APA would not have taken the adverse actions described above but for Dolan's having spoken up against and filed a charge regarding discrimination based on his status as a Micronesian who is Marshallese.

WHEREFORE, Plaintiff requests that this Court:

1. Provide Plaintiff with a civil trial by jury.
  2. Award Plaintiff compensation for general damages in accordance with the law.
  3. Award Plaintiff punitive damages in accordance with the law.
  4. Award Plaintiff his reasonable attorney's fees.
  5. Award Plaintiff his costs and disbursements.
  6. Award Plaintiff any and all other relief this Court deems just and proper.

Respectfully submitted at Hagatna, Guam on this 17<sup>th</sup> day of April, 2017.

*The Law Office of John Richard Bordallo Bell*

By

John Richard Bordallo Bell, Esq.

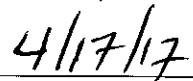
**VERIFIED COMPLAINT; DEMAND FOR JURY TRIAL - 13**

## **VERIFICATION OF COMPLAINT**

The undersigned swears under penalty of perjury under the laws of Guam and the United States that the foregoing is true and correct to his own knowledge, except as to matters which are therein stated on his information or belief as to those matters he believes them to be true.



Brian Dolan, Plaintiff



Dated

# DISTRICT COURT OF GUAM

BRIAN DOLAN	)	
	)	
Plaintiff	)	
	)	
v.	)	Civil Action No.
AERO MICRONESIA, INC. dba. ASIA PACIFIC	)	
AIRLINES	)	
Defendant	)	

## SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Resident Agent: GEORGE CHIU  
Aero Micronesia, Inc. dba ASIA PACIFIC AIRLINES  
306 Tumon Vista  
Tamuning, Guam 96913

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: THE LAW OFFICE OF JOHN RICHARD BORDALLO BELL  
341 S. Marine Corps Drive,  
RK Plaza, Suite 309  
Tamuning, Guam 96913  
Tel: (671) 646-5722  
john.r.b.bell@gmail.com

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*CLERK OF COURT*

Date: \_\_\_\_\_

*Signature of Clerk or Deputy Clerk*

**UNITED STATES DISTRICT COURT**  
 for the  
**District of Guam**

<u>BRIAN DOLAN</u> <i>Plaintiff</i> v. <u>AERO MICRONESIA, INC. dba ASIA PACIFIC AIRLINE</u> <i>Defendant</i>	) ) ) ) )	Civil Action No. )
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**WAIVER OF THE SERVICE OF SUMMONS**

To: John Richard Bordallo Bell

*(Name of the plaintiff's attorney or unrepresented plaintiff)*

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from April 18, 2017, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: \_\_\_\_\_

*Signature of the attorney or unrepresented party*

John Richard Bordallo Bell

*Printed name of party waiving service of summons*

*Printed name*

341 S. Marine Corps Drive,  
 RK Plaza, Suite 309  
 Tamuning, GU 96913

*Address*

john.r.b.bell@gmail.com

*E-mail address*

(671) 646-5722

*Telephone number*

**Duty to Avoid Unnecessary Expenses of Serving a Summons**

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.